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HILL et al. v. BELL et al.

June 15, 1922.

[112 S. E. 617.]

1. Boundaries (§ 37 (3)*)—Evidence Held to Sustain Verdict Finding Boundary Line as Claimed by Plaintiff.—Where the beginning of a disputed boundary line was the mouth of a designated branch, and the testimony was almost evenly divided as to which of two streams was known as that branch, a verdict finding the boundary as claimed by plaintiff, and as established by the survey beginning at another point, and reaching the branch claimed by plaintiff by following the calls of the description except as to discrepancies in two distances, held supported by the evidence.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 602.]

2. Appeal and Error (§ 1070 (1)*)—Corrected Verdict Held Not Prejudicial to Defendants after Disclaimer by Plaintiff.—Where the boundary as fixed by the original verdict was supported by the evidence, but the jury were required to put their verdict in proper form, and thereafter returned a verdict fixing a different line, which gave to defendants some of the land awarded to plaintiff by the original verdict, and gave plaintiff a small, triangular portion originally awarded to defendants, and plaintiff agreed to accept the corrected verdict in so far as it was favorable to defendants, and to disclaim the small tract awarded to him, defendants were not prejudiced by the corrected verdict, even if it was unsupported by the evidence.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 609.]

Error to Circuit Court, Campbell County.

Proceeding by C. Booker Bell and others against W. D. Hill and others, to ascertain the true boundary line between land of plaintiffs and defendants. Verdict and judgment for plaintiffs, and defendants bring error. Remanded to the circuit court, with directions to grant a new trial, unless one plaintiff files disclaimer as to a portion of the land awarded to him.

James H. Guthrie, of South Boston, for plaintiffs in error.

W. M. Murrell, of Lynchburg, and *Robt. A. Russell*, of Rustburg, for defendants in error.

TERRY v. BISHOP et al.

June 15, 1922.

[112 S. E. 619-621.]

1. New Trial (§ 70*)—Where There Is Competent Evidence to Sustain Verdict, Error to Set It Aside.—Where there is evidence before

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the jury of a character not physically impossible or inherently incredible, which, if credited by the jury, is sufficient to sustain the verdict, it is reversible error to set it aside.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 453.]

2. Brokers (§ 50*)—Entitled to Commission When Purchaser Ready, Willing, and Able to Purchase under Owner's Terms Produced.—The liability of the owner to the agent for commissions depends on whether the agent, at the time fixed for the completion of a contract of sale, which the agent relies on as entitling him to commissions, has produced a purchaser ready, willing, and able to comply with the land-owner's terms of sale as stipulated in the owner's contract or as varied by mutual consent.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266.]

3. Brokers (§ 50*)—Not Entitled to Commissions in Producing Purchaser Not Able Nor Willing to Purchase within Time Fixed Due to Defects in Title.—Where brokers under an agreement with owner to sell property within a time fixed produced a purchaser who was not able himself nor willing, on account of alleged defects in the title, to complete the contract of sale within the time fixed, held, that owner was not liable for brokers' commissions.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266.]

Error to Circuit Court, Halifax County.

Action by F. W. Bishop and J. D. Fry, partners trading as the Bishop-Fry Company, and others, against E. M. Terry. From a judgment for plaintiffs, defendant brings error. Reversed, and final judgment entered.

B. W. Leigh, of Halifax, and *Jas. H. Guthrie*, of South Boston, for plaintiff in error.

John Martin, of South Boston, for defendants in error.

HUTCHINSON *v.* COMMONWEALTH.

June 15, 1922.

[112 S. E. 624.]

1. Larceny (§ 45*)—Evidence Held Admissible to Identify the Stolen Property.—In a prosecution for larceny of Liberty Bonds sent by a New York bank to a local bank, evidence by the cashier of the local bank that the bond which was recovered was like the others and that an envelope shown witness, with the address of the New York bank at the bottom, was like the envelopes in which all the bonds came to his bank from the New York bank, held admissible to further identify the property, where a letter from the New York bank to the

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